

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

1423
74-~~8053~~

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-8053

UNITED STATES OF AMERICA ex rel.
JOSEPH M. PAQUETTE,

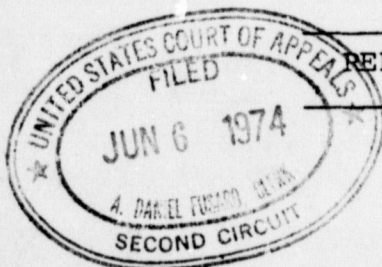
Petitioner-Appellant,

against

J. E. LAVALLEE, superintendent
Clinton Correctional Facility,
Dannemora, New York,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



REPLY BRIEF OF PETITIONER-APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA ex rel.	:	
JOSEPH M. PAQUETTE,	:	
	:	
Petitioner-Appellant,	:	Docket No. 74-8053
-against-	:	
	:	
J. E. LAVALLEE, superintendent	:	
Clinton Correctional Facility,	:	
Dannemora, New York,	:	
	:	
Respondent-Appellee.	:	
- - - - -	:	-x

REPLY BRIEF OF PETITIONER-APPELLANT

The brief of appellee makes no argument that jeopardy had not attached when the jury was impaneled and sworn during petitioner's first trial. It also fails to set forth any facts supporting the contention that the alleged threats to witnesses could be attributed to defendant, who was incarcerated when the threats were allegedly made. Moreover, there is no factual support showing that petitioner was even aware that the alleged threats had been made.

Instead, appellee places full reliance upon the discretion of a trial judge under the doctrine of manifest necessity. The question presented by this position of

appellee is whether a rule of law allowing retrial after the discharge of the jury in this case would permit a prosecutor to harrass criminal defendants by first subjecting them to jeopardy and then discontinuing the trial because he had failed to assure the presence of all necessary witnesses. The principle of Downum v. United States, 372 U.S. 734 (1963), would prohibit such a rule of law and there are no subsequent decisions by the Supreme Court which would justify the result reached by the District Court in dismissing the petition for habeas corpus.

Dated: New York, N.Y.
June 6, 1974

Respectfully submitted,

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